

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

May 4, 2021
WebEx/Teleconference

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

Merit Issue Complaints

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of
Regulations Amend Section 66.1

In this rulemaking action, the State Personnel Board (Board) proposes to amend section 66.1 of Title 2, Chapter 1, of the California Code of Regulations (CCR).

BACKGROUND

Merit issue complaints allege that the State Civil Service Act or Board regulation or policy has been violated by a state agency and includes but is not necessarily limited to interference with promotional opportunities, interference with a person's access to any Board appeals process, and the designation of managerial positions pursuant to Government Code section 3513.¹ (Cal. Code Regs., tit. 2, § 66.1.) Existing Board rule section 66.1 requires an applicant or employee to first file a merit issue complaint with the state agency responsible for the alleged act or decision and that the state agency respond to the complaint within 90 days. An applicant or employee may file an appeal to the Board's Appeals Division within 30 days after (1) the state agency denies the complaint or (2) the 90 days expires before the state agency issues a decision on the complaint.

Currently, section 66.1 fails to provide any timeline for filing a merit issue complaint with the state agency responsible for the alleged act or decision. The Board's *Appeals Resource Guide* merely states that the state agency's "personnel office should be contacted regarding the time for filing a merit issue complaint." (pg. 39, May, 2019.)

ANTICIPATED BENEFITS OF THE REGULATORY ACTION:

The anticipated benefits of this regulatory action include: (1) updating the Board's appeal-related regulations to include the timeline for filing a merit issue complaint with the state agency responsible for the alleged act or decision and (2) conserving the fiscal interests of the state by clarifying the Board's merit issue complaint process standards.

¹ According to section 66.1, "merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in Board regulations."

SPECIFIC PURPOSE OF THE REGULATORY ACTION

Amend § 66.1. Merit Issue Complaints.

Existing Board rule, California Code of Regulations, title 2, section 66.1, requires an applicant or employee to first file a merit issue complaint with the state agency responsible for the alleged act or decision. However, section 66.1 fails to provide any limitation period for filing a merit issue complaint with the state agency responsible for the alleged act or decision. The Board's *Appeals Resource Guide* merely states that the state agency's "personnel office should be contacted regarding the time for filing a merit issue complaint." (pg. 39, May, 2019.)

Language will be added to clarify that each state agency will establish policies for receiving and addressing merit issue complaints regarding their hiring and selection processes. The word "policy" will be used in place of "process," while "challenge" will be used in place of "appeal." A sentence will be added to clarify that merit issue complaints shall be filed with the state agency within one year of the event or events leading to the filing.

Subdivision (a) will now end after the sentence: "Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in Board regulations."

Subdivision (b) will read as: "Each state agency shall establish a policy ~~and publicize to its employees its process for~~ receiving and addressing merit issue complaints regarding its hiring and selection processes. That ~~process~~ policy shall include provisions for informing a charging employees of their right to challenge ~~appeal~~ the state agency's decision on the merit issue complaint ~~to~~ with the Appeals Division." These two sentences and their additions and deletions were previously part of subdivision (a).

The added sentence clarifying the timeframe for filing merit issue complaints will be the beginning of subdivision (c), and will continue with the rest of what was previously part of subdivision (a): "Failure of a state agency to respond to a merit issue complaint within 90 days of receipt of the complaint shall be deemed a denial of the complaint's allegations and shall release the appellant to file a merit issue complaint directly with the Appeals Division. A merit issue complaint shall be filed with the Appeals Division within 30 days of the state agency's denial of the complaint."

Thus, what was previously subdivision (b) will become subdivision (d), with language that clarifies the investigative review process.

ECONOMIC IMPACT ASESMENT:

Initial Statement of Reasons
Amendment to Section 66.1

The proposed regulations set standards only related to the Board's appeal procedures. Therefore, the amending of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The amending of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action includes an updated civil service hearing process.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:

The proposed regulations set a standard only related to Board's appeal procedures. Accordingly, it has been determined that the amending of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.